

ROBERT DALE EVERETT
Claimant

SALVATION ARMY

Respondent

AND

AMERICAN ZURICH INSURANCE COMPANY

Insurance Carrier

Docket No. 1,010,612

Claimant appeals the July 1, 2003 preliminary hearing Order of Administrative Law Judge John D. Clark. Claimant was denied benefits after the Administrative Law Judge found that claimant was not an employee of respondent, but instead was a patient in respondent's drug and rehabilitation treatment facility.

Claimant's Application for Review raises the following specific issues:

- (1) Whether claimant was an employee of respondent and whether claimant's injury, therefore, arose out of and in the course of such employment.
- (2) Whether the Administrative Law Judge exceeded his jurisdiction in finding that claimant was not an employee of respondent.

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the Administrative Law Judge should be affirmed.

Claimant was a resident at respondent's adult rehabilitation center in Wichita, Kansas, participating voluntarily in a rehabilitation program stemming from claimant's

ongoing alcoholism problem. Claimant signed an application which documented his understanding and acceptance of the house rules, including the fact that he would be required to participate in work therapy as part of his ongoing rehabilitation. Claimant was provided a small income per week, which started at \$7 per week and increased a dollar per week thereafter, and also included canteen cards, which allowed him access to cigarettes, soft drinks and other snacks. Claimant was obligated to attend all activities.

There were no state or federal taxes withheld from any of the gratuities provided to claimant. At the start of the program, claimant signed a document acknowledging that he was aware of the policies and that his relationship with respondent was not one of an employer-employee relationship, but rather was for the benefit of claimant in the rehabilitation program.

Claimant participated in the program for less than one month, starting on February 25, 2003. On March 2, 2003, claimant failed to attend classes and was absent from the facility. When he appeared two days later, the facility director, Major James E. Porterfield, noted that claimant appeared to be in a state of intoxication. Claimant was requesting to purchase a bicycle from the warehouse. He was asked to leave and was told he could return when he was sober. Claimant alleges that on March 8, 2003, he suffered an injury to his shoulder, left arm, neck and low back.

Claimant, designated by respondent as a "work therapy beneficiary", was provided room, board, counseling services and laundry facilities, and the above-mentioned weekly cash and credit stipend, but was provided no other compensation.

Claimant argues that the benefits provided, including the cash stipend, gratuities and room and board, constituted wages for the purpose of the Workers Compensation Act. Therefore, claimant would be deemed an employee of respondent. Claimant further argues that respondent received a benefit from claimant's activities, again indicating that claimant was an employee.

Respondent, on the other hand, argues that there was no employer-employer relationship, as the document signed by claimant specifically stated claimant was not an employee of respondent. Additionally, there was no implied contract for hire here, as the benefit was to claimant during the rehabilitation program, rather than to respondent.

This appears to be an issue of first impression in the state of Kansas.

Respondent cites cases both in favor of and against its position, however, attempting to distinguish those contrary to its position. In *McBeth*,¹ the Louisiana Court of Appeals found that a program, identical to the one in this matter, was,

... instituted and carried on solely for the purpose of helping the plaintiff and others in his situation. The work performed by him as a beneficiary was a part of that program, designed for his rehabilitation. Thus, his work did not accrue to the benefit of The Salvation Army; it accrued to the benefit of the plaintiff himself.”²

However, in *Pearson*,³ the Missouri Workers Compensation Division reached a different conclusion. In *Pearson*, the claimant, who had been a cook or laborer for most of his life, entered the treatment program with the Salvation Army in Missouri. He signed the same beneficiary admittance statements as were signed by the claimant in this case. He began the program July 1997 and suffered an injury July 29, 1998, while preparing breakfast. The Missouri court found it significant that claimant was performing a job which was his normal vocation, that of a cook. The Court also found it significant that the claimant, while entering a program which normally lasted from 90 days to a maximum of six months, had worked there for over a year, indicating that his relationship with the respondent had changed from that of a work therapy beneficiary to that of an actual employee.

The Missouri court went on to cite numerous cases where benefits were denied after various courts found the work beneficiaries to not be employees when the program participation was significantly shorter in duration.

In *Anderson*,⁴ benefits were denied when the claimant, who had entered the same program as discussed here, suffered a low back injury in the same month of his admission into the program. In *Oaks*,⁵ the Idaho Industrial Commission held “[t]he whole purpose of entering the program is to become socially and physically rehabilitated from drug or alcohol and spiritually regenerated.” In *Oaks*, the court also found it significant that the claimant’s

¹ *McBeth v. The Salvation Army et al.*, 314 So.2d 468 (La.App. 1975).

² *Id.* at 472.

³ *Pearson v. Salvation Army*, Case No. 98-087214 (Mo. Div. of Work. Comp., August 13, 2001.)

⁴ *Anderson v. The Salvation Army*, Slip Op., Case No. A97-1208 (Pa. Work. Comp. Appeals Board, October 10, 1998).

⁵ *Oaks v. The Salvation Army*, Slip Op., Case No. IC 90-713791 (Idaho Industrial Commission, December 15, 1993).

participation in the program was of a short duration, extending less than 90 days before the injury occurred.

In this instance, claimant's injury is alleged on March 8, 2003, after a February 25, 2003 entrance into the program. The Board finds that the *Pearson* decision is distinguishable from this case due to the longevity of that claimant's participation with the Salvation Army. Additionally, that claimant was performing work duties--i.e., a cook--that he had performed most of his adult life. This is not the case in this instance, as claimant's participation was of short duration and the activities performed by claimant were not those which claimant would normally have performed throughout his life. The *McBeth* court found it significant that the beneficiaries in the rehabilitation program were all required to do some type of work in order to get their minds off their problems and to generate personal pride in themselves.

Additionally, at the time of the various claimant's entries into the program, the Salvation Army was not seeking employees. Additionally, none of the claimants discussed in the above-cited cases were seeking employment, but rather treatment and rehabilitation for their alcohol and drug-related problems.

The Louisiana Compensation Act, cited in *McBeth*, was "designed to cover all employees who might reasonably be brought under its protection and should be construed liberally to that end."⁶

That statute is nearly identical to the Kansas version, which states:

It is the intent of the legislature that the workers compensation act shall be liberally construed for the purpose of bringing employers and employees within the provisions of the act to provide the protections of the workers compensation act to both.⁷

The Board finds that under these circumstances, claimant was not an employee of respondent, but was instead a work beneficiary who entered into a program for the purpose of rehabilitation and treatment for his ongoing alcohol problems. The short duration of claimant's stay, coupled with the circumstances surrounding his participation in the program, indicates that, claimant was a beneficiary of a treatment program, rather than an employee.

⁶ *Thibodaux v. Sun Oil Co.*, La. App., 40 So.2d 761 (May 19, 1949), *aff'd* 218 La. 453, 49 So.2d 852 (Dec. 11, 1950).

⁷ K.S.A. 44-501(g).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated July 1, 2003, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of September 2003.

BOARD MEMBER

c: John L. Carmichael, Attorney for Claimant
Kim R. Martens, Attorney for Respondent
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Director